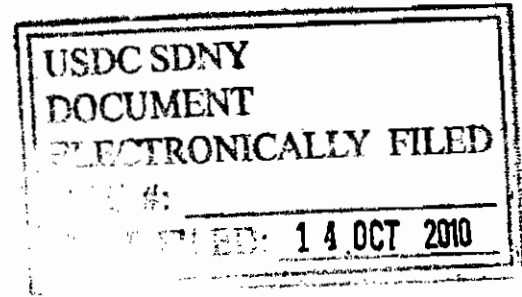


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
RODNEY GRACE,

Petitioner,

-v-

No. 10 Civ. 3853 (LTS)(GWG)

THE STATE OF NEW YORK,

Respondent.
-----X

ORDER ADOPTING REPORT AND RECOMMENDATION

Pro se Petitioner Rodney Grace ("Petitioner") brought this action seeking habeas corpus relief pursuant to 28 U.S.C. § 2254 against Respondent, the State of New York ("Respondent"). On September 7, 2010, Magistrate Judge Gabriel W. Gorenstein issued a Report and Recommendation ("Report"), recommending that the petition be denied without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Neither party has made any objection to the Report, and the time to do so has elapsed.

In reviewing a report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C.A. § 636(b)(1)(c) (West 2008). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wynn v. Lempke, No. 08 Civ. 3894 (RJS), 2009 WL 1227362, at *2 (S.D.N.Y. May 5, 2009).

The Court has reviewed thoroughly Judge Gorenstein's Report and finds no clear error in his recommendation. Accordingly, the Court accepts the Report. The petition is hereby

denied without prejudice. Because the dismissal is without prejudice, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c). In addition, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 444 (1962).

The Clerk of Court is respectfully requested to enter judgment accordingly and close this case.

SO ORDERED.

Dated: New York, New York
October 14, 2010

A handwritten signature in black ink, appearing to read 'L. Swain', is written over a horizontal line.

LAURA TAYLOR SWAIN
United States District Judge